

# **Exhibit 1**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

EMIGRANT BANK AND PACIFIC  
MERCANTILE BANK,

Plaintiffs,

v.

SUNTRUST BANK; TRUIST BANK; AND  
DOES 1 THROUGH 10 INCLUSIVE,

Defendants.

Civil Action No. 1:20-cv-02391-PGG

**DECLARATION OF KENNETH B. FOWLER  
IN SUPPORT OF SUNTRUST BANK AND TRUIST BANK'S  
MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT**

KENNETH B. FOWLER hereby declares:

1. I am a member in good standing of the Bar of the State of New York and the State of Georgia, and I have been admitted to practice before this Court *pro hac vice*. I am a senior associate at the law firm of King & Spalding LLP and am counsel to Defendants SunTrust Bank and Truist Bank (collectively, "SunTrust") in the above-captioned action. I submit this Declaration in support of SunTrust's Motion to Dismiss the First Amended Complaint (the "Motion") and to put before the Court certain documents that are relevant to the Motion.

2. A true and correct copy of the Request for Judicial Intervention, filed on July 9, 2021, by Plaintiffs Emigrant Bank and Pacific Mercantile Bank in *Emigrant Bank, et al. v. Virgo*

*Investment Group LLC, et al.*, Index No. 654350/2021 (N.Y. Cty. Sup. Ct., Commercial Div.), is appended hereto as **Attachment A**.

3. A true and correct copy of the settlement agreement between the Our Alchemy LLC Bankruptcy Trustee (“Alchemy Trustee”), on one hand, and Virgo Investment Group LLC (“Virgo”) and various Virgo affiliates, on the other hand, filed by the Alchemy Trustee as ECF 927-3 in *In re Our Alchemy LLC*, Case No. 16-bk-11596 (Bankr. Ct. D. Del.), on October 26, 2021, is appended hereto as **Attachment B**.

4. A true and correct copy of the bankruptcy court’s order approving the settlement agreement between the Alchemy Trustee, on one hand, and Virgo and various Virgo affiliates, on the other hand, entered by the court as ECF 946 in *In re Our Alchemy LLC*, Case No. 16-bk-11596 (Bankr. Ct. D. Del.), on November 17, 2021, is appended hereto as **Attachment C**.

5. A true and correct copy of the settlement agreement between the Alchemy Trustee and Stephen Lyons, filed by the Alchemy Trustee as ECF 928-3 in *In re Our Alchemy LLC*, Case No. 16-bk-11596 (Bankr. Ct. D. Del.), on October 26, 2021, is appended hereto as **Attachment D**.

6. A true and correct copy of the bankruptcy court’s order approving the settlement agreement between the Alchemy Trustee and Stephen Lyons, entered by the court as ECF 945 in *In re Our Alchemy LLC*, Case No. 16-bk-11596 (Bankr. Ct. D. Del.), on November 17, 2021, is appended hereto as **Attachment E**.

7. A true and correct copy of the Order Granting Leave to Amend, entered and publicly filed as NYSCEF Doc. No. 43 in *SunTrust Bank v. Calrissian LP*, Index No.

654148/2016 (N.Y. Sup. Ct., N.Y. Cty. Oct. 6, 2020), is appended hereto as **Attachment F**.

8. A true and correct copy of the Order Granting in Part Motion for Default Judgment, entered and publicly filed as NYSCEF Doc. No. 86 in *SunTrust Bank v. Calrissian LP*, Index No. 654148/2016 (N.Y. Sup. Ct., N.Y. Cty. Nov. 4, 2021), is appended hereto as **Attachment G**.

9. A true and correct copy of SunTrust's April 2, 2020, letter to the Lenders regarding indemnification for its expenses in this action is appended hereto as **Attachment H**.

10. A true and correct copy of SunTrust's December 16, 2020, letter to the Lenders regarding indemnification for its expenses in one of the adversary actions filed by the Alchemy Trustee is appended hereto as **Attachment I**.

11. A true and correct copy of SunTrust's March 9, 2021, letter to the Lenders regarding the distribution of funds is appended hereto as **Attachment J**.

12. I declare under penalty of perjury that the foregoing is true and correct.

Executed in East Rockaway, New York, on December 10, 2021.

  
Kenneth B. Fowler